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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

DR. CARLOS MANUEL FALLA Y ALVAREZ,
Petitioner,

v.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent.

Appendix to Petition for a Writ of Certiorari to The United States Court of Appeals, Fifth Circuit

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DR. CARLOS MANUEL FALLA y ALVAREZ

v.

PAN AMERICAN LIFE INSURANCE COMPANY

No. 63-184-CIV-EC

United States District Court
Southern District of Florida
Miami Division

September 4, 1964

Before EMETT C. CHOATE

THIS CAUSE having come on for trial and the Court

having reviewed the Stipulations and evidence of the parties, having heard the testimony of the witnesses and being otherwise advised in the premises, it is thereupon

CONSIDERED, ORDERED and ADJUDGED that Final Judgment be and it is hereby entered in favor of the Plaintiff, DR. CARLOS MANUEL FALLA Y ALVAREZ, and against the Defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, a Louisiana Corporation, in these respective sums, for the following Pan American Life Insurance Policies, to wit:

Policy No. 254-900	$ 995.00
Policy No. 324-766	$ 3,114.00
Policy No. 387-428	$14,346.00
Policy No. 414-798	$ 619.00
Policy No. 441-506	$ 8,500.00
Policy No. 636-489	$ 7,347.00

together with lawful interest at 6% from November, 1960, in the sum of $8,666.84, and attorney's fees in the amount of $5,230.54 and legal costs in this case incurred, said costs to be taxed by the Clerk of this Court, and that said Plaintiff have execution therefor, it is

DONE and ORDERED at Miami, Dade County, Florida, this 4 day of September A. D., 1964.

DR. CARLOS MANUEL FALLA y ALVAREZ

v.

PAN AMERICAN LIFE INSURANCE COMPANY

No. 63-184-CIV-EC

United States District Court
Southern District of Florida

September 4, 1964

This is an action brought by Carlos Manuel Falla y Alvarez to recover the cash surrender value of the benefits under a series of six life insurance policies on his life, issued by Pan-American Life Insurance Company. The cause came on before the Court for trial on February 18, 1964. The Court having reviewed the pleadings, stipulations, depositions, and having heard the testimony together with argument and briefs of counsel, and being otherwise fully advised in the premises does here enter its Findings of Fact and Conclusions of Law.

Findings of Fact

1. This cause involved the same general factual background and issues of law as those decided in **Blanco v. Pan-American Life Insurance Company**, 221 F. Supp. 219 (S. D. Fla. 1963). The general statements of historical fact and findings common in all causes as reported in that opinion are here adopted as findings in this cause.

2. The following policies are involved:

(a) Policy 254-900 was issued under date of Febru-

ary 23, 1964. The initial premiums were paid in Dollars. The cash surrender value of this policy is $995.00.

(b) Policy 324-766 was issued April 14, 1939. The initial premium was paid in Dollars. The cash surrender value of this policy is $3,114.00.

(c) Policy 387-428 was issued March 16, 1944. The initial premium was paid in Dollars. The cash surrender value is $14,346.00.

(d) Policy 414-798 was issued April 25, 1946. The initial premium was paid in Dollars. The cash surrender value is $619.00.

(e) Policy 441-506 was issued August 4, 1947. The initial premium was paid in Dollars. The cash surrender value is $8,500.00.

(f) Policy 636-489 was issued March 19, 1959. The initial premium was paid in Cuban pesos. The cash surrender value is $7,347.00.

3. The applications for all the policies were made in Cuba. The applications and the policies when issued were all in the Spanish language. In each case the applications were sent to the home office of the defendant in New Orleans, Louisiana and were there accepted and the policy issued. The policies were then forwarded to the Cuban agent of the Company in Cuba who authenticated the signature of the Company officers before a Cuban Notary before delivery to the insured.

4. The four policies, earliest in date (listed as (a)

through (d) above) were all originally United States Dollar contracts with premiums and benefits payable in New Orleans at the company's home office. The latter two policies (listed as (e) and (f) above) were Cuban peso contracts payable in Cuba. In 1952 at various times, the four dollar contracts were amended by monetary agreements executed by the parties as follows:

> "In consideration of the Pan-American Insurance Company accepting payments of the premiums on the above numbered policy in Cuban Currency and in Cuba, in lieu of the payment of United States Dollars in New Orleans, Louisiana, it is requested that my policy be amended so that all premiums, all benefits and all claims payable under its terms be demandable and payable in the National currency of Cuba in Havana, Cuba, **on the basis of one Peso for each Dollar** (emphasis added), required by the contract, and it is agreed that upon receipt of this request by the Pan American Life Insurance Company, it shall become a part of the contract between the undersigned and the Company."

5. The plaintiff is a former Cuban national residing and domiciled in Florida in this judicial district. He is not only a Cuban refugee, but has also been "blacklisted" by the Castro government, first and originally for being a man of property and at a later date for his alleged participation in the Bay of Pigs invasion. The defendant is a corporation, organized and existing under the laws of the State of Louisiana, with a principal place of business in the City of New Orleans, Louisiana. Diversity of citizenship exists.

6. The plaintiff has complied with all conditions precedent contained in the policies, including payment of the premiums thereunder. The plaintiff has made demand for the cash value of the policies prescribed by the terms of same. Demand was made for same on November 30, 1960, and was refused by the defendant. The defendant has not tendered payment either in dollars or in pesos or otherwise in response to the demands.

Opinion and Conclusions of Law

This Court's conclusions of law and opinion was fully expressed on identical facts in **Blanco v. Pan-American Life Insurance Co.**, 221 F. Supp. 219 (S. D. Fla. 1963). The cause now before the Court is of course most similar to the **Zabaleta** factual situation discussed therein because of the monetary agreement.

It should be noted that since the opinion in the **Blanco** case was written, that the Supreme Court of Louisiana has reversed the lower court of the state in **Ajuria v. Pan-American Life Insurance Co.**, 161 So. 2d (La. 1964). In reaching its decision that court approved the language used by this court in the **Blanco** case. It now appears that the courts of both Louisiana and Florida are alike in rejecting the contentions of the defendant. In Florida, the Supreme Court has rejected certiorari in **Pan American Life Insurance Co. v. Raij**, 164 So. 2d 204 (Fla. 1964). The various decisions of the Third District Court of Appeal rejecting the contentions of the defendant insurance company stand as the present law in Florida. See, **Pan American Life Insurance Co. v. Raij**, 156 So. 2d 785 (Fla. App. 1963); **Pan American Life Insurance Co. v. Recio**, 164 So. 2d 197 (Fla. App. 1963).

The United States Supreme Court upon Petition for Certiorari invited the views of the Solicitor General of the United States in regard to the questions presented by these cases. Mr. Archibald Cox in his pleadings before the high Court, filed in May, 1964, advised the Court that in his opinion the Defendant's contentions as to the defense presented by either the Bretton Woods Agreement or the Act of State doctrine should be rejected, and indicated further that the Cuban decrees had no extraterritorial application. Finally, the applicability of the International Monetary Fund Agreement to these cases seems moot since Cuba withdrew from the Fund in April of 1964.

The United States Supreme Court denied certiorari on the cases from both Louisiana and Florida. **Pan American Life Insurance Co. v. Lorido**, 377 U. S. 990 (1964); **Pan-American Life Insurance Co. v. Recio**, 377 U. S. 990 (1964); and **Pan-American Life Insurance Co. v. Ajuria**, 377 U. S. 998 (1964).

This Court had been withholding its decision in this cause awaiting the decision of the Court of Appeals for the Fifth Circuit on the appeal in the **Blanco** case, however, in view of all these developments, I feel that decision should no longer be withheld, for as said by the Supreme Court of Louisiana:

> We find untenable the suggestion of counsel that this court should await the United States Supreme Court's action in regard to several cases pending before it on applications for writs, ... To require this refugee, who is in a strange land and possibly in dire need to wait indefinitely for a final adjudication of his claim would be

a travesty on justice; and we think it would be folly to suggest that he return to Cuba, for his effort to secure relief there might well wind up in his "liquidation." 161 So. 2d at 74.

Judgment in favor of the plaintiff for the cash surrender value of each of the policies at issue will be entered. The parties have stipulated that if judgment be entered in favor of the plaintiff, it may include an allowance for attorney's fees in the amount of 12½% of the amount recovered, and judgment in accordance with the stipulation will be entered. Prevailing counsel shall submit form of judgment.

Entered at Miami, Florida this the 4th day of September, 1964.

(Signed) EMETT C. CHOATE

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

versus

DR. CARLOS MANUEL FALLA y ALVAREZ,
Appellee.

Appeal from the United States District Court for the Southern District of Florida

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(March 9, 1967.)

Before COLEMAN and DYER, Circuit Judges, and ESTES, District Judge.

DYER, Circuit Judge: Dr. Alvarez brought suit against the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, to recover the cash surrender values and accumulated dividends on six life insurance policies.[1]

The applications for all the policies were made in Cuba. The applications and the policies when issued were all in the Spanish language. The applications were sent to the home office of the defendant in New Orleans, Louisiana, where they were accepted and the policies issued. The policies were then sent to the Cuban Agent of the Company in Cuba, who authenticated the signature of the Company officers before a Cuban Notary before delivery to Dr. Alvarez.

The first four policies were originally issued as United States Dollar contracts with premiums and benefits payable at the company's home office in New Orleans. The latter two policies were Cuban peso contracts payable in Cuba. In 1952 the four dollar policies were amended by monetary agreements executed by the parties as follows:

> "In consideration of the Pan-American Life Insurance Company accepting payments of the premiums on the above numbered policy in Cuban Currency in Cuba, in lieu of the payment of United States Dollars in New Orleans, Louisiana,

[1]Policy 254-900 issued February 23, 1964; Policy 324-766 issued April 14, 1939; Policy 387-428 issued March 16, 1944; Policy 414-798 issued April 25, 1946; Policy 441-506 issued August 4, 1947; and Policy 636-489 issued March 19, 1959.

it is requested that my policy be amended so that all premiums, all benefits and all claims payable under its terms be demandable and payable in the National currency of Cuba in Havana, Cuba, on the basis of one Peso for each Dollar, required by the contract, and it is agreed that upon receipt of this request by the Pan-American Life Insurance Company, it shall become a part of the contract between the undersigned and the Company."

At the time that Dr. Alvarez made demand upon the defendant for payment of the cash values of the policies, the Cuban Peso was being bought and sold for 23 and 24½ cents American money.

In a non-jury trial, the district court found that Dr. Alvarez had complied with all conditions precedent contained in the policies and had made demand for the cash values of the policies. Judgment was entered requiring the defendant to pay to Dr. Alvarez an American dollar for each Peso owed in Cuba on the theory that the "official exchange rate" required this, notwithstanding that the Cuban Peso was worth considerably less than a dollar at all times pertinent. The defendant appealed.

We had the identical situation here presented in Pan American Life Insurance Company v. Zabaleta, 5 Cir. 1966, 362 F. 2d 167. There we said:

"The district court permitted recovery on a dollar for a peso basis. This conclusion was reached, as in the DIEGO case, on the 'official exchange rate' theory with which we have disagreed in

DIEGO and must disagree with respect to Zabaleta. The district court also reached the conclusion that the one for one ratio was contemplated by the parties and made a part of the terms of the policy amendment. We are unpersuaded that, in 1952, when the amendment was made, it was contemplated by the parties that demand might be made for payment in dollars. Rather, we think, it was intended by the parties to change the obligation to pay a stated number of dollars to an obligation to pay a stated number of pesos, and this without regard to future variations in the respective values of the two currencies. In our opinion Miss Zabaleta should recover on the same basis as Diego, with her judgment measured by the dollar value of the pesos which she is entitled to have awarded under the policy provisions."

Dr. Alvarez does not attempt to answer **Zabaleta.** He claims that the peso monetary agreements were not properly executed. But this issue was not raised below and cannot be raised for the first time on appeal. Even had the issue been raised below, the failure of Dr. Alvarez to cross-assign error as to the district court's finding that the monetary agreements were properly executed precludes consideration of such contention on appeal. **North Texas Producers Ass'n v. Metzger Dairies, Inc.,** 5 Cir. 1965, 348 F. 2d 189.

Zabaleta was decided by this court after the district court decided this case. The judgment of the district court must be and it is reversed and remanded for reconsideration in the light of **Zabaleta.**

REVERSED and REMANDED.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

v.

DR. CARLOS MANUEL FALLA y ALVAREZ,
Appellee.

No. 22230

In The

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

April 4, 1967

ON PETITION FOR REHEARING

You are hereby advised that the court has today entered an order denying the Petition for Rehearing in the above case. No opinion was rendered in connection therewith.

(Signed) EDWARD W. WADSWORTH,
Clerk

TRANSLATION OF "CONVENIO MONETARIO"

Monetary Agreement

To form an integral part of Policy No. _____.

In consideration of the fact that the Pan-American Life Insurance Company accepts that payment of the premiums of the policy cited in the caption be made in Cuban currency and in the Republic of Cuba instead of making such payment at New Orleans, Louisiana, in United States Dollars, it is requested that my policy be amended so that all premiums, benefits and claims payable in accordance with its terms be demandable and payable in the national currency of the Republic of Cuba at Havana, Cuba, on the basis of One Peso for each Dollar payable under the contract, it being agreed that upon Pan-American Life Insurance Company's receiving this request, it shall form an integral part of the contract made between the undersigned and the Company.

Dated this ____ day of _____, 195__. _____

POLICY OWNER

EXCERPT OF APPELLEE'S TRIAL TESTIMONY

Q What are the cash values of each of these policies? Did you determine that?

A I calculated it several weeks back. Policy No. 254900, $995.00. Policy No. 324776, $3,114.00. Policy No. 387428, $14,346.00. Policy No. 414798, $619.00. Policy No. 636489, $7,347.00. Policy No. 441506, $8,500.00. (R. 214).